

REMARKS/ARGUMENTS

Claims 1 – 14, 16 - 24 and 53 - 66 are currently pending. Claims 15 and 25-52 are canceled. Claims 1 - 13, 16 - 24, 53, 55-62, 64 and 65 were rejected. No claims are amended herein.

As discussed below, all of the claims are in condition for allowance.

Indication of Allowability of Claims 14, 55, 63, and 66

The Applicants' agent thanks the Examiner for the indication of allowability of claims 14, 55, 63, and 66, but believes that, for reasons given below, the claims from which they depend are also allowable. Therefore, the Applicants' agent will avoid, for now, any amendment that could result in higher claim fees; and requests the Examiner to consider the reasons for allowability of all claims, described below.

Rejection of claims 1-4, 6-9, 11,16-22, 24, 57, 58, 59 under 35 U.S.C. § 102(b) as being Anticipated by Kim (US 5519689)

Claim 1

Claim 1 recites, in part, "determining a first time associated with receipt of a first data packet; determining a second time associated with receipt of a second data packet sent immediately after the first data packet; determining a size of the second data packet; and calculating a transmission bandwidth by dividing the size of the second data packet by a function of a difference between the first and second times."

The Examiner has cited Kim column 13, lines 5-20 and FIGS. 8 and 9. Column 13, lines 5-20 disclose:

"window time $W_i(t-1, t)$ = current cell arrival time $T_i(t)$ – previous cell arrival time $T_i(t-1)$

where $T_i(t)$ represents a current cell arrival time of a channel I , and

$T_i(t-1)$ represents a previous cell arrival time of the channel I , in order to compare the window time with a previously set minimum cell interval time for detecting whether an incoming stream of cells violates the traffic parameters described by the calling subscriber terminal. The bandwidth assignment unit 122 controls the bandwidth assignment of the cell by storing a previous cell counter value and a current cell counter value indicative of a value of a total assignment bandwidth assigned to a virtual path containing a current cell, extracting the number of cells having an identical virtual path within the window time by the following equation (s):"

FIG. 8 is disclosed to represent "a traffic control routine for traffic control a stream of cells of class 'A' indicative of voice data by the policing controller." [column 6, lines 23-25] FIG. 9 is disclosed to represent "a traffic control routine for traffic control a stream of cells of class 'C' indicative of real time image data by the policing controller." [column 6, lines 26-29]

Nothing in the cited portions indicates "receipt of a second data packet sent immediately after the first data packet," as recited by claim 1. Kim is silent regarding the immediacy with which the second data packet is sent after the first data packet.

The Examiner further cites Kim column 13, lines 18-25, which discloses:

"of a total assignment bandwidth assigned to a virtual path containing a current cell, extracting the number of cells having an identical virtual path within the window time by the following equation (2):

number of cells having an identical virtual path identifier in window time
= current cell counter value-previous cell counter value"

However, nothing in the cited portions indicates "determining a size of the second data packet" or "calculating a transmission bandwidth by dividing the size of the second data packet by a function of a difference between the first and second times," both of which are recited by claim 1. Kim is silent regarding both "a size of the second data packet" and its determination. Kim's equation "number of cells having an identical virtual path identifier in window time = current cell counter value-previous cell counter

value” apparently has nothing to do with the size of a data packet.

Accordingly, the Examiner has not shown Kim to disclose every limitation of claim 1, and claim 1 is allowable over Kim.

Claims 6, 7, 16, 19, 20, 59

The Examiner has grouped claims 6, 7, 16, 19, 20, and 59 with claim 1 in his rejection. Claims 6, 7, 16, 19, 20, and 59 are allowable over Kim for reasons similar to those given for claim 1.

Moreover, with respect to claim 19, the Examiner has not made any attempt to identify how and where Kim discloses a “modem for receiving the data packets,” as recited by claim 19. Since Kim is concerned with high speed telephone networks, use of a modem is neither likely nor reasonably suggested.

Claim 2

Claim 2 depends from claim 1 and therefore includes all the limitations of claim 1. Accordingly, claim 2 is allowable at least for the reasons given for claim 1.

Moreover, claim 2 is allowable for additional reasons.

Claim 2 recites, in part, “reading a header in the first data packet, wherein the header includes data indicating the second data packet will be transmitted immediately after transmission of the first data packet to make the first and second data packets back-to-back data packets.”

The Examiner has cited Kim, column 12, lines 19-30, FIG. 7, and FIG. 11.

Kim, FIG. 7 is disclosed to represent “a traffic control routine for traffic control a stream of cells of class ‘A’ indicative of voice data by the policing controller of FIGS. 5 and 6.” [column 6, lines 20-22] Nothing in FIG. 7 may be interpreted as “reading a header in the first data packet,” or even that there exists “a header in the first data packet,” as recited by claim 2.

Kim, FIG. 11, which column 12, lines 19-30 describes, is disclosed to represent “a memory map of a parameter pool and multi rule base.” [column 6, lines 33-34] The Examiner has not shown FIG. 11 or column 12, lines 19-30 to disclose “a header in the first data packet,” much less one including “data indicating the second data packet will be transmitted immediately after transmission of the first data packet to make the first and second data packets back-to-back data packets,” as recited by claim 2.

Thus, Kim also does not disclose the additional limitations of claim 2.

Accordingly, Kim does not disclose all the limitations of claim 2, and claim 2 is allowable over Kim.

Claims 11, 24, 57, 58

The Examiner has grouped claims 11, 24, 57, and 58 with claim 2 in his rejection.

Claims 11, 24, 57, and 58 are allowable over Kim for reasons similar to those given for claim 2.

Claim 3

Claim 3 depends from claim 1 and therefore includes all the limitations of claim 1.

Accordingly, claim 3 is allowable at least for the reasons given for claim 1.

Moreover, claim 3 is allowable for additional reasons.

Claim 3 recites, in part, "reporting to a server computer the transmission bandwidth."

The Examiner has cited Kim, "traffic control block"; column 7, lines 1-20; FIG. 2, and FIG. 3.

In the interest of brevity, the Applicants' agent will omit reproduction of the lengthy section of Kim.

Nowhere in the cited portion does Kim once mention reporting a transmission bandwidth to a server computer. Kim is silent with respect to a hardware implementation of FIGS. 2 and 3. There is no indication of any client-server relationship between the blocks TCB 32, CCB 26, GFC 18 or statistical multiplexer 36. Even if the Examiner were to (incorrectly) state that the CCB is a server computer, nowhere in the cited section does Kim mention reporting a transmission bandwidth.

Thus, Kim also does not disclose the additional limitations of claim 3.

Accordingly, Kim does not disclose all the limitations of claim 3, and claim 3 is allowable over Kim.

Claims 8, 17, 21

The Examiner has grouped claims 8, 17, and 21 with claim 3 in his rejection.

Claims 8, 17, and 21 are allowable over Kim for reasons similar to those given for claim 3.

Claims 4, 9, 18, 22

Claims 4, 9, 18, and 22 depend respectively from claims 1, 6, 16, and 20, and therefore include all the limitations of their parent claims. Accordingly, claims 4, 9, 18, and 22 are allowable at least for the reasons given for claims 1, 6, 16, and 20.

Rejection of claims 5, 10, 12, 13, 23, 53, 54, 56, 60, 61, 62, 64, 65
under 35 U.S.C. § 103(a) as being Unpatentable over Kim (US 5519689)
in view of Burns et al. (US 6449291)

Claim 5

The Examiner has not made a *prima facie* case for obviousness over Kim and Burns.

For reasons given above, Kim does not disclose all the limitations of claim 1. In particular, Kim does not disclose "determining a size of the second data packet," or "calculating a transmission bandwidth by dividing the size of the second data packet by a function of a difference between the first and second times." Moreover, the Examiner has not shown Kim to reasonably suggest either limitation, both of which are recited by claim 1. Kim does not disclose receipt of data packets that can vary in size, therefore there is absolutely no suggestion of "determining the size of a data packet." Moreover, Kim gives an equation "current usage bandwidth during current window time = 1 + (window time + the number of cells having an identical virtual path identifier in the window time). [column 13, lines 29 – 31]

If the Examiner wishes to indicate (incorrectly) that this is equivalent to determining transmission bandwidth, then Kim's transmission bandwidth equation does not factor in the size of the second data packet, and there is no suggestion to do so.

Accordingly, Kim not only does not disclose, but also does not reasonably suggest all the limitations of claim 1.

The Examiner does not cite Burns for overcoming the deficiencies of Kim. Rather, Burns is cited only to purportedly disclose the "correction factor selected as a function of the size of the second data packet," recited by claim 5. But, the Examiner gives no cited location in Burns for this supposed content and thus has not met his

burden under MPEP 706.02(j) to indicate “the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate.” Accordingly, the burden of proof has not been shifted from the Examiner to the Applicants.

Moreover, the Examiner does not make any suggestion that Burns discloses or reasonably suggests “determining a size of the second data packet,” or “calculating a transmission bandwidth by dividing the size of the second data packet by a function of a difference between the first and second times,” as recited by claim 1, and therefore contained within dependent claim 5.

Accordingly, the Examiner has not shown Kim and Burns, alone or in combination, to disclose or reasonably suggest all the limitations of claim 5. Accordingly, claim 5 is allowable over Kim and Burns.

Claims 10, 12, 13, 23, 53, 54, 56, 60, 61, 62, 64, 65

The Examiner has grouped claims 10, 12, 13, 23, 53, 54, 56, 60, 61, 62, 64, and 65 with claim 5 in his rejection. Claims 10, 12, 13, 23, 53, 54, 56, 60, 61, 62, 64, and 65 are allowable over Kim in view of Burns for reasons similar to those given for claim 5.

Conclusion

The absence of additional patentability arguments should not be construed as either a disclaimer of such arguments or that such arguments are not believed to be meritorious. In light of at least the reasons discussed herein, claims 1 – 14, 16 - 24 and 53 - 66 are in condition for allowance. Favorable consideration and a Notice of Allowance are respectfully requested.

Should the Examiner have any further questions about the application, Applicant respectfully requests the Examiner to contact the Applicants' agent at (425) 455-5575 to resolve the matter.

In the event additional fees are due as a result of this amendment, you are hereby authorized to charge such payment to Deposit Account No. 07-1897.

Dated this 23rd day of June, 2010.

Respectfully submitted,

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